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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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10 Russell Gordon Doemer,

11 Plaintiff,

12 vs.

13 Charles Ryan; Maureen Johnson; Jennifer
14 Fox; and Corizon Health Care Corporation,
15 Defendants.
16

No. CV-17-02174-PHX-DGC (BSB)

ORDER

17 Plaintiff Russell Doemer has filed motions to reopen and continue this case.
18 Docs. 145, 150, 152. Defendants oppose the motions. Docs. 147, 151. No party requests
19 oral argument. For reasons stated below, the Court will deny the motions.

20 **I. Background.**

21 Plaintiff is confined in Arizona state prison. In July 2017, he filed a pro se civil
22 rights complaint pursuant to 42 U.S.C. § 1983. Doc. 1. The complaint asserts various
23 constitutional violations, including Eighth Amendment medical claims against Arizona
24 Department of Corrections Director Charles Ryan, Corizon Health Care Corporation,
25 Assistant Facility Health Administrator Maureen Johnson, and Nurse Jennifer Fox. *See*
26 *id.* at 6 (Count One); Doc. 27 at 2-8. These claims allege a denial of medical treatment
27 for Plaintiff's hepatitis, prostate cancer, and blocked urethra. *See id.* All other claims
28 and Defendants were dismissed in the screening order. Doc. 27 at 19-20.

1 The parties agreed to settle the case for a confidential amount in early January
2 2019 and filed a notice to this effect. *See* Docs. 135, 136. The Clerk administratively
3 terminated the case on March 1, 2019 because the parties failed to timely file a stipulation
4 to dismiss. Docs. 136, 138. The parties subsequently filed separate stipulations to
5 dismiss with prejudice the claims against the individual Defendants (Doc. 139) and
6 Corizon (Doc. 143), which the Court granted (Docs. 140, 144).

7 Plaintiff filed a motion to reopen and continue the case on April 8, 2019.
8 Doc. 145. He filed another motion to continue the case several weeks later. Doc. 150.
9 Defendants responded to each motion. Docs. 147, 151.

10 **II. Discussion.**

11 Plaintiff makes several arguments as to why the case should be reopened. None
12 has merit.

13 First, Plaintiff contends that the stipulation to dismiss the individual Defendants is
14 not effective due to an “illegal name for Plaintiff.” Doc. 145 at 1. The stipulation was
15 prepared by defense counsel and misidentifies Plaintiff as “Richard G. Doemer.”
16 Doc. 139 at 1. But Plaintiff crossed out this name and wrote “Russell G. Doemer” when
17 he signed the document. *See id.* The stipulation, as amended, contains Plaintiff’s correct
18 legal name.

19 Second, Plaintiff contends that the settlement agreement and all stipulations are
20 moot because “no sum of money has been utilized, cashed, or used” by Plaintiff.
21 Doc. 150 at 2. The settlement agreement provides that it “shall become effective
22 following tender of payment and execution by [Plaintiff].” Doc. 147 at 12. Plaintiff
23 signed the agreement on March 8, 2019. *Id.* The agreement became effective when the
24 settlement check was sent to Plaintiff on April 1. *Id.* at 14-17. The fact that he has not
25 cashed the check or used the money does not make the agreement and stipulations moot.¹

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27 ¹ On April 28, 2019, Plaintiff informed defense counsel that the check had been
28 stolen and requested that a replacement check be issued. *Id.* at 19-20. Plaintiff received
the new check on May 28. *See* Doc. 151 at 5-7.

1 Third, Plaintiff contends that the stipulations to dismiss were to be filed only after
2 he received the settlement check. Doc. 150 at 2. He notes that the stipulation to dismiss
3 the individual Defendants was filed before the check was issued. *Id.* But that stipulation
4 provides that no monies were to be paid on behalf of the individual Defendants.
5 Doc. 139. The settlement agreement also makes this point, explaining that the “[c]laims
6 against Charles Ryan, Maureen Johnson, [and] Jennifer Fox have been dismissed with
7 prejudice against them – with no monies paid on their behalf.” Doc. 147 at 6. The filing
8 of the stipulation to dismiss on March 12 provides no basis for reopening this case.

9 Finally, Plaintiff claims that an examination by a new doctor shows that his
10 hepatitis is in an advanced stage and the condition clearly was misdiagnosed by Corizon.
11 Doc. 145 at 1-3. Plaintiff seeks to reopen the case and amend his complaint. *Id.* at 3.
12 But Plaintiff released all medical claims he may have against Defendants when the
13 settlement agreement became effective on April 1. The agreement provides for the
14 release of all claims whether “known or unknown, matured or unmatured, asserted or
15 unasserted, or which may hereafter accrue or otherwise be acquired, on account of [his]
16 injuries[.]” Doc. 147 at 7. Plaintiff expressly waived and assumed the risk of any claims
17 for damages that are unknown, “including any claims which, if known, would materially
18 affect his decision to enter into [the agreement].” *Id.* Plaintiff fully understood and
19 voluntarily accepted the agreement’s terms. *See id.* at 11. The agreement is a binding
20 contract that precludes Plaintiff from pursuing any claim against Defendants based on the
21 circumstances alleged in his complaint. *See* Doc. 147 at 2-3 (citation omitted).²

22 Plaintiff has failed to show that this case should be reopened. His motions to
23 reopen and continue the case therefore will be denied.

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25 ² This Circuit has held that the repudiation or “complete frustration” of a
26 settlement agreement can be grounds to set aside a judgment under Rule 60(b)(6).
27 *Keeling v. Sheet Metal Workers Int’l*, 937 F.2d 408, 410 (9th Cir. 1991). Plaintiff,
28 however, has not shown the repudiation or complete frustration of the settlement
agreement. *See Moyer v. Tilton*, No. CIV S-03-1350, 2011 WL 590602, at *1 (E.D. Cal.
Feb. 10, 2011) (denying motion to reopen where the plaintiff failed to make this
showing).

